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7 STATE OF CALIFORNIA, et al.,  
8 Plaintiffs,  
9  
10 v.  
11 MICHAEL REGAN<sup>1</sup>, et al.,  
12 Defendants.  
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15 Case No. 20-cv-03005-RS  
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18 **ORDER GRANTING MOTION TO  
19 REMAND**

20 This is one of several cases filed in various United States District Courts throughout the  
21 nation challenging rules promulgated by the United States Environmental Protection Agency and  
22 the United States Army Corps of Engineers that define “waters of the United States” for purposes  
23 of applying the Clean Water Act, *see e.g.*, *Conservation Law Foundation v. United States  
Environmental Protection Agency*, No. 1:20-cv-10820 (D. Mass.); *Pascua Yaqui Tribe v. United  
States Environmental Protection Agency*, 4:20-cv-00266 (D. Ariz.), including another case  
pending in this court, *Waterkeeper Alliance, Inc.. v. United States Environmental Protection  
Agency* 3:18-cv-3521 RS (N.D.Cal.).

24 Defendants seek voluntary remand to the agencies and dismissal of this case. Plaintiffs  
25 oppose remand unless the current rule is vacated. The issue of whether vacatur is warranted or not  
26 appears to be moot, however, given that the *Pascua Yaqui* court issued an order on August 13,  
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<sup>1</sup> EPA Administrator Michael Regan is automatically substituted for Andrew Wheeler, pursuant  
to Rule 25(d) of the Federal Rules of Civil Procedure.

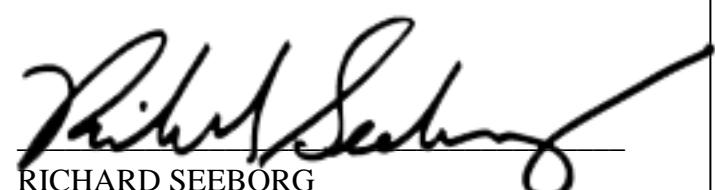
United States District Court  
Northern District of California

1 2021 vacating the rule.

2 Were it still necessary to reach the issue, this court would not be inclined to impose  
3 vacatur. Plaintiffs argue that defendants have now acknowledged “severe deficiencies” in the  
4 current rule and admit to “irreversible harms,” thereby presenting a different situation than when  
5 their application for a preliminary injunction was denied. Defendants, however, appear to be  
6 reconsidering the rule primarily for policy reasons—issues the order denying a preliminary  
7 injunction pointedly observed were outside the scope of the judicial inquiry at that juncture. While  
8 it is within defendants’ discretion to modify their policies and regulatory approaches, and it may  
9 ultimately resolve some or all of plaintiffs’ objections to the current rule, there has been no  
10 evaluation of the merits—or concession by defendants—that would support a finding that the rule  
11 should be vacated.<sup>2</sup> Accordingly, the motion to remand is granted. The Clerk shall close the file.

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13 **IT IS SO ORDERED.**

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15 Dated: September 16, 2021



16  
17 RICHARD SEEBORG  
18 Chief United States District Judge

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27 <sup>2</sup> The State Intervenors do not oppose remand as long as it does not imply any determination,  
tentative or otherwise, that the existing rule is legally deficient. Nothing in this order so concludes,  
or is based on any assertion by defendants that could be read as having such an implication.